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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,312	07/14/2003	Eric L. Wetzel	20915.00	4754

7590 09/09/2004

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EXAMINER

NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,312	Applicant(s) WETZEL ET AL.	
	Examiner Tuan N. Nguyen	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/14/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Spector.

In regard to claim 1, Spector discloses a scented pen having a housing/barrel having advertising, such as body figures of various odor-producing products, on the pen.

In regard to claim 18, Spector discloses a scented ballpoint pen having an advertisement, such as body figures of various odor-producing products, thereon and having a scent giving off an aroma specific to a product, service, or overall impression as desired by an advertiser.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spector in view of Smith, Stuart, Cote, JP 7-290889 (hereinafter Umeda), and/or the catalogue of Geddes-Schools (hereinafter Geddes).

Spector discloses a scented ballpoint pen having a housing/barrel having advertising, such as body figures of various odor-producing products, on the pen. The Spector device allows the user to associate the aroma or scent of the pen with the logo or body figure incorporated with the pen housing/barrel. The teaching concept is similar to that of the instant invention. Spector further discloses that the scent incorporated in the pen encompass all known odors (see col. 1, line 39 et seq.).

The differences are that the instant invention utilizes an imprinted logo on the barrel to identify the associate aroma of the pen and the scent is either incorporate in the metal or plastic coating of the housing/barrel or in a soft plastic polymer or rubber grip incorporated in a recess of the housing/barrel. Even though the differences stated above are not taught in Spector, attention is directed to Smith, Stuart, Cote, Umeda, and Geddes references, which discloses various differences that lack in the Spector reference. Smith discloses a ballpoint pen having the addition of additives in a barrel wall (202) or directly as an exterior layer of the barrel wall (see col. 5, line 53 et seq.). Stuart discloses a marking device having imprinted logo on the barrel/body (12) either directly thereon or via a label. Cote teaches the method of soaking a writing device into a liquid fragrance to absorb the aroma or scent therein so as to produce a scented

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writing implement. Umeda discloses a writing implement having an aroma/scent releasing attachment (11) incorporated on a housing/barrel of the writing implement. Finally, Geddes discloses a grip for a writing instrument having an aromatherapy scent incorporated therein.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the Spector concept of identification and scent releasing with the concept of a scented additive either in a barrel/housing or in an exterior coating of a barrel/housing as, for example, taught by Smith and/or Umeda; imprinted logo on a barrel/body either directly thereon or via a label as, for example, taught by Stuart; and/or a grip for a writing instrument having an aromatherapy scent incorporated therein as, for example, taught by Geddes, where in so doing would involve mere substitution of one functional equivalent scent releasing means and the method of identification thereof for another and the selection of any of these known equivalents to produce and identify a scent would perform equally well on the Spector device.

4. Claims 1, 3, 4, 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yazawa in view of the catalogue of Geddes-Schools (hereinafter Geddes) and further in view of Spector.

Yazawa discloses a ballpoint pen having a rubber grip in a recess of a barrel/housing of the pen (see figures). Spector discloses various scents can be incorporated in the pen encompass all known odors (see col. 1, line 39 et seq.). Stuart discloses a marking device having imprinted logo on the barrel/body (12) either directly

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thereon or via a label. Geddes discloses a grip for a writing instrument having an aromatherapy scent incorporated therein. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Yazawa grip in view of Geddes, a specific scent as claimed, and as, for example, taught by Spector in order to provide aromatherapy. The statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over the device of Yazawa modified in view of Geddes and Spector, which is certainly capable of being used in the claimed manner.

Conclusion

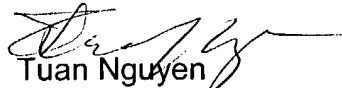
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hayduchok et al., Leahan, and Haller disclose other scented devices.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tuan Nguyen
Primary Examiner
Art Unit 3751
9/5/04

TN